

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARCUS CHILDRESS,
Plaintiff,

v.

MS. GINA CLARK, *et al.*,
Defendants.

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CIVIL ACTION NO. 24-CV-2210

ORDER

AND NOW, this 16th day of July, 2024, upon consideration of Plaintiff Marcus Childress's Motion to Proceed *In Forma Pauperis* (ECF No. 4), Prisoner Trust Fund Account Statement (ECF No. 5), and *pro se* Complaint (ECF No. 1), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Marcus Childress, #QP-7484, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of SCI Chester or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Childress's inmate account; or (b) the average monthly balance in Childress's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Childress's inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Childress's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Superintendent of SCI Chester.

4. The Complaint is **DEEMED** filed.

5. For the reasons stated in the Court's Memorandum, the following claims are dismissed from this case:

a. Childress's § 1983 claims against the DOC are **DISMISSED WITH PREJUDICE**; and

b. Childress's § 1983 claims against Superintendent Clark and Wellpath are **DISMISSED WITHOUT PREJUDICE** to amendment in accordance with paragraph seven (7) of this Order.

6. The Clerk of Court is **DIRECTED** to send Childress a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.

7. Childress is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state a plausible § 1983 claim against an appropriate defendant or defendants based on the denial of physical therapy. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Childress's claims against each defendant, and shall bear the title "Amended Complaint" and the case number 24-2210. If Childress files an amended complaint, his amended complaint must be a complete document that includes all of the bases for Childress's claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims. Claims that are not included in the amended complaint will not be considered part of this case. **This means that if Childress still seeks to proceed on his ADA**

and RA claims against the DOC, he must replead those claims in any Amended Complaint, including the factual basis for those claims, or they will not be considered part of this case and he will be deemed to have abandoned them. When drafting his amended complaint, Childress should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

8. If Childress does not file an amended complaint the Court will direct service of his initial Complaint on the DOC only. Childress may also notify the Court that he seeks to proceed on his remaining ADA and RA claims against the DOC rather than file an amended complaint. If he files such a notice, Childress is reminded to include the case number for this case, 24-2210.

9. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

BY THE COURT:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON, J.